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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/762,392
Filing Date: January 22, 2004
Appellant(s): BLANSIT ET AL.

MAILED
DEC 27 2007
GROUP 1700

Christopher L. Makay
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 26 September 2007 and response to non-compliant brief filed 13 November 2007 appealing from the Office action mailed 28 March 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct (essentially, request for reconsideration with previously presented claim set).

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,398,517	POINDEXTER	03-1995
3,942,685	LINDNER	03-1976

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Issue 1:

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over POINDEXTER (5,398,517).

POINDEXTER discloses an apparatus for periodically cleaning water collection tray of potable water collection system. The reference discloses the valve 88 having an inlet and outlet, a pump 82 having an inlet port 84 and outlet port 86, and the spray manifolds 40, 42, 44 (see Figs 2A, 2B, 3A, 3B, and 4). The reference discloses the sanitizing fluid source and the controller 90 controlling the pump and valve to spray

sanitizing fluid via the spray manifolds to clean the tray. See the abstract, col. 1, lines 30-33, col. 2, lines 43-57, col. 4, lines 20-50, col. 5, lines 6-53, the claims and Figs 2-4.

POINDEXTER does not disclose the drip tray of a product dispenser, the valve switch, the pump switch, and the mixing union as claimed.

It would have been obvious for one skilled in the art to use the cleaning system taught by POINDEXTER to sanitize the drip tray of a product dispenser, because the drip tray and the collection tray taught by POINDEXTER are functionally equivalent, because both trays are used to collect the drip from the fluid dispensing apparatus. One skilled in the art would have known to use the valve switch and the pump switch to improve the cleaning apparatus. Moreover, it would have been obvious for one skilled in the art to use a mixing unit if using more than one sanitizing fluid.

Issue 2:

Claims 15-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over POINDEXTER in combination with LINDNER (3,942,685).

POINDEXTER discloses an apparatus for periodically cleaning water collection tray of potable water collection system. The reference discloses the valve 88 having an inlet and outlet, a pump 82 having an inlet port 84 and outlet port 86, and the spray manifolds 40, 42, 44 (see Figs 2A, 2B, 3A, 3B, and 4). The reference discloses the sanitizing fluid source and the controller 90 controlling the pump and valve to spray sanitizing fluid via the spray manifolds to clean the tray. See the abstract, col. 1, lines 30-33, col. 2, lines 43-57, col. 4, lines 20-50, col. 5, lines 6-53, the claims and Figs 2-4.

POINDEXTER does not disclose the product dispenser, the valve switch, the pump switch, the drip tray sanitizing system is internal to the beverage dispenser, the product dispenser, and the mixing union as claimed.

LINDNER discloses a product dispenser comprising a housing including a controller and drip tray disposed on the housing. See Fig. 1, col. 1, lines 55-66, col. 2, lines 47-48-50, col. 8, lines 35-66. LINDNER does not teach drip tray sanitizing system as claimed.

It would have been obvious for one skilled in the art to use the cleaning system taught by POINDEXTER in the product dispenser taught by LINDNER to obtain the claimed product dispenser, because the drip tray of LINDNER and the collection tray taught by POINDEXTER are functionally equivalent. One skilled in the art would have known to use the valve switch and the pump switch to improve the cleaning apparatus. Moreover, it would have been obvious for one skilled in the art to use a mixing unit if using more than one sanitizing fluid.

(10) Response to Argument

Initially, the Examiner notes that appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

The Examiner further notes that the cited references disclose each and every structural limitation of the claimed invention, either explicitly, implicitly or inherently, and

appellant's arguments are primarily directed to 1) rearrangement of parts and 2) motivation for combining the well known prior art structures to result in the invention as claimed.

In response to appellant's argument re issue 1), the §103 rejection over
POINDEXTER:

On page 6 of the Brief, appellant argues that the proposed modification would change the principle of operation, citing *In re Ratti* and pointing to MPEP 2143.01(VI). However, *Ratti* is directed to an oil seal comprising a bore engaging portion with outwardly biased resilient spring fingers inserted in a resilient sealing member. The primary reference relied upon in a rejection based on a combination of references disclosed an oil seal wherein the bore engaging portion was reinforced by a cylindrical sheet metal casing. Patentee taught the device required rigidity for operation, whereas the claimed invention required resiliency. Thus, the suggested combination of

references would require a substantial reconstruction (i.e. rigidity vs. resiliency) and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate. Contrary to appellant's assertion, the simple rearrangement of the rejection would not result in a substantial reconstruction and the apparatus of POINDEXTER would function equally as well with the same predictable result of sanitizing the drip tray. Accordingly, the *Ratti* case law and the instant rejection are not considered to be relatively comparable.

Further regarding POINDEXTER, appellant argues that rearranging the nozzles to a lower portion would not allow the apparatus of POINDEXTER to sanitize the entire collection path and would result in bacteria forming in unsanitized areas. This is considered speculative arguments and provides no evidence or factual showing of such results. That is, unlike *Ratti*, there is no factual showing of changing of operation in the prior art rejection as purported by appellant. Such simple rearrangement would still result in the sanitization of the collection path and clearly does not destroy or substantially alter the function of POINDEXTER as alleged by appellant. As can be readily seen in the Figures of POINDEXTER, the nozzles (40//44) are shown above the coils (14) and tray (20). In this configuration, the top of the coils are sprayed and the tray is sprayed via the spray pressure and gravity. In making the obvious determination, the Examiner maintains that simply rearranging the location of the nozzle, for instance "disposed in the drip tray" as claimed, would result in appellant's claimed invention and yield the same predictable result of sanitizing of the tray. In fact, if the nozzle in

POINDEXTER was rearranged to be "disposed in the drip tray" (i.e. below the coils) the spray pressure would direct sprayed fluid onto the bottom of the coils and gravity would redirect sprayed fluid onto the top of the coils and the drip tray. Thus, contrary to appellant's assertion, such rearrangement would still result in the same result of sanitizing the system and possibly more thorough coverage of the spray. In terms of related systems, such spray nozzle configuration in the tray would result in thorough spraying and cleaning/sanitizing of the entire chamber and contents thereof in the same manner as in a conventional dishwasher which incorporates a spray nozzle in the

bottom spraying upward. Accordingly, the Examiner maintains that the simple rearrangement of the location of the nozzle would provide the same predictable results of sanitizing the chamber (including the drip tray on the bottom) and the contents thereof (including the coils) and would be well within the level and skill generally available to one having ordinary skill in the art. The Examiner notes that appellant is silent with respect to secondary considerations such as unexpected results.

On page 8, appellant further asserts that POINDEXTER “teaches away” from such rearrangement because the nozzle configuration would result in less sanitization. This is not persuasive for at least reasons indicated above and the Examiner finds no teaching away in POINDEXTER because the suggested rearrangement would result in the same predictable results with the possibility of more thorough spray coverage resulting in better sanitization. There is nothing in POINDEXTER that reasonably suggest such rearrangement would not provide the same results.

Similarly, on page 8 appellant points to MPEP 2143.01 (V) and argues that “the proposed modification would render the prior art invention being modified unsatisfactorily for its intended purpose”. However, such arguments are considered speculative and are not persuasive for at least reasons of record. The rearrangement would result in the same predictable results as previously discussed, is well within the level of ordinary skill in the art, and clearly would not destroy the apparatus of POINDEXTER.

In the paragraph bridging pages 8 and 9, appellant further argues that rearranging the nozzle to be disposed in the tray “only allows Poindexter to sanitize

lower regions” of the collection path and that “the spray nozzle will not effectively reach the higher portions of his collection path”. As noted above, such arguments are speculative and provide no factual basis for such conclusion. In the same manner as gravity assists in sanitizing the balance of the flowpath in POINDEXTER, rearranging the nozzles in the tray and below the coils such that in operation the nozzles spray upwardly and gravity assists in sanitizing the flowpath as the sanitizing fluid returns downwardly to the tray would result in an apparatus that yields the same predictable result in sanitizing the flowpath including the drip tray, as claimed by appellant.

Regarding claims 2-14, appellant contends that the patentability of claims 2-15 lies with the patentability of claim 1. Accordingly, in view of the foregoing arguments claims 2-15 are still considered obvious over POINDEXTER.

For at least the foregoing reasons, the Examiner maintains the position that claims 1-14 are unpatentable over POINDEXTER.

In response to appellant's argument re issue 2), the §103 rejection over POINDEXTER and LINDNER:

On page 10 of the Brief, appellant again argues that the proposed modification would change the principle of operation, citing *In re Ratti* and pointing to MPEP 2143.01(VI). However, such arguments are not persuasive for at least reasons of same indicated above.

Moreover, appellant's arguments are generally directed to the physical combination of the references and that such physical combination would change the

principle operation. However, “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.... Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). See also *In re Sneed*, 710 F.2d 1544, 1550, 218 USPQ 385, 389 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”); and *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973) (“Combining the teachings of references does not involve an ability to combine their specific structures.”). In the instant case, POINDEXTER discloses spraying, *inter alia*, a drip tray with sanitizing liquid via a spray manifold and sanitizing system. LINDNER discloses a drip tray in a product dispenser. Thus, all of the structural components are known in POINDEXTER and LINDNER. The only difference is the combination of “old elements” into a single product dispenser by providing the sanitizing system of POINDEXTER in the drip tray of LINDNER. Accordingly, it would have been obvious to one having ordinary skill in the art to provide the sanitizing system of POINDEXTER in the product dispenser of LINDNER, since the operation of a spray manifold sanitizing system for a drip tray is in no way dependent on the operation of the other components of the product dispenser, and a sanitizer system with spray manifold could be used in combination with a conventional product dispenser to achieve the predictable results of sanitizing a drip tray.

Appellant further provides piecemeal analysis of each reference in an attempt to establish an improper physical combination of the references to support changing the principal operation of the references. However, it is well settled that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). While such arguments are not persuasive for at least reasons indicated above, the arguments will be discussed further below.

In the paragraph bridging pages 10 and 11, appellant argues that the tray of LINDNER is removable and that the incorporation of the spray nozzle of POINDEXTER into the tray of LINDNER "is contrary to Lindner's principle of operation." Notwithstanding the foregoing position, this is not persuasive because there is no requirement of the nozzle being connected to the tray but only "disposed in the tray". Thus, the nozzle assembly of POINDEXTER could be "disposed in the tray" of the product dispenser of LINDNER without being connected to the tray while still allowing the tray of LINDNER to be removed.

On page 11, top paragraph, appellant further argues that LINDNER does not provide a drain for the tray. This is not persuasive because POINDEXTER does provide a drain for the intended purpose of removing fluids from the tray. Thus, the incorporation of a drain on the tray to yield the predictable result of draining fluids from the tray is disclosed in the combination relied upon by the Examiner and would have been at once envisaged by one having ordinary skill in the art. Thus, a drain used for its

intended purpose (i.e. to remove fluids from the tray) does not appear to patentably distinguish in the instant case.

On page 11, bottom paragraph, appellant further argues portions of POINDEXTER not relied upon in the rejection. Namely, appellant argues the combination of the nozzles of POINDEXTER being "disposed" in the tray of LINDNER "does not allow the cleaning of upper regions of the collection path". This is confusing since the upper regions of the collection path are not relied upon in the rejection. But rather, the nozzles and sanitizing equipment of POINDEXTER are being combined with the drip tray in the product dispenser of LINDNER which yield the predictable results of sanitizing a drip tray in a product dispenser. Thus, the features not relied upon in POINDEXTER do not serve to violate principals of operation in the instant combination.

In response to appellant's argument on page 12 that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant case, the only difference between the prior art of record and the claimed invention is the rearrangement of a nozzle such that the nozzle is "disposed in the drip tray". However, the simple rearrangement of the sanitizing nozzle in the prior art would result in the same predictable results as in the claimed invention, i.e.

sanitation of the drip tray. Accordingly, such rearrangement would have been obvious to one having ordinary skill in the art absent secondary considerations.

In response to appellant's arguments on page 12 that both POINDEXTER and LINDNER teach away from the proposed combination, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). Notwithstanding this, the Examiner finds no teaching away from the combination of POINDEXTER and LINDNER for at least reasons discussed above, and no evidence or reasonable showing to the contrary is evident.

In response to appellant's arguments that the references have not been "attacked individually; rather the deficiencies in each reference that prevent their combination have been explained", this is not persuasive because such arguments are directed to the bodily incorporation of the references instead of the what the combined teachings of those references would have suggested to those of ordinary skill in the art (see *In re Keller* as previously cited).

Regarding claims 16-24, appellant contends that the patentability of claims 16-24 lies with the patentability of claim 15. Accordingly, in view of the foregoing arguments claims 16-24 are still considered obvious over POINDEXTER and LINDNER.

For at least the foregoing reasons, the Examiner maintains the position that claims 15-24 are unpatentable over the combination of POINDEXTER and LINDNER.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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